

REMARKS

The present Amendment is in response to the Official Action of December 26, 2006. Claims 1, 7, and 10 have been amended. Claim 6 has been canceled. Therefore, claims 1-5 and 7-18 remain currently pending in the present application. Applicants' remarks relating to the above-amended claims and the objections/rejections set forth by the Examiner in the outstanding Action are set forth below.

As an initial matter, Applicants direct the Examiner's attention to the above-amended Abstract for the present application. Said Abstract has been amended to fall within the range of 50-150 words, and Applicants respectfully submit that such is a clear and concise description of one aspect of the present invention. Because of the amendments of the Abstract, Applicants respectfully request that such be deemed as being in proper format.

Turning now to the substance of the Official Action, the Examiner rejected claims 1-7 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,991,654 to Foley ("Foley"), claim 10 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,296,641 to Robioneck et al. ("Robioneck"), claim 8 under 35 U.S.C. § 103(a) as being obvious in view of Foley, claim 9 under 35 U.S.C. § 103(a) as being obvious over Foley in view of U.S. Patent Publication No. 2003/0093153 to Banick et al. ("Banick"), claims 11-17 under 35 U.S.C. § 103(a) as being obvious over Robioneck in view of U.S. Patent No. 6,235,034 to Bray ("Bray"), and claim 18 under 35 U.S.C. § 103(a) as being obvious over Robioneck in view of Bray and in further view of U.S. Patent No. 6,413,259 to Lyons et al. ("Lyons"). In short, it is the Examiner's position that each and every one of the elements of the originally presented claims are either anticipated and/or obviated in view of the prior art noted above. With regard to the obviousness rejections under

35 U.S.C. § 103(a), Applicants note that although the Examiner referred to certain claims also rejected under § 102, Applicants assume that the Examiner intended to simply refer to the dependent claims not anticipated in the Examiner's opinion by the prior art cited. These dependent claims have been listed above in relation to the brief discussion of the rejections set forth in the Official Action. In any event, Applicants note that because of the amendments to the currently pending claims set forth above, the rejections put forth by the Examiner are no longer applicable.

Tantamount to these amendments to the claims are those amendments made with respect to independent claims 1 and 10. Such claims now require that the intervertebral disc replacement device consist of first and second members having first and second articulation surfaces, respectively. The methods set forth in independent claims 1 and 10 require that these first and second articulation surfaces be held in substantial registration with respect to one another during their insertion in the intervertebral disc space. Although the Examiner asserts that certain other of the method steps recited in these independent claims are anticipated or obviated by the prior art cited, Applicants point out that none of the prior art references utilized by the Examiner teach or suggest performing those method steps in connection with a two-piece articulated spinal implant device. In particular, both Foley and Robioneck teach performing similar method steps in connection with multi-piece implants where the pieces are mechanically fixable with respect to one another. On the other hand, the present invention is directed to overcoming the difficulty of affixing and inserting multi-piece implants that are capable of moving with respect to one another. There is simply no indication in the prior art cited by the Examiner that those references would accomplish the same goal as the present invention. In fact, the

beauty of the present invention lies in the fact that the multi-piece articulated implants can be implanted, and thereafter at least some normal movement between the respective vertebral bodies can be restored. Implanting multiple pieces of an implant which can move with respect to one another (like in the present invention) is much more difficult than implanting multiple pieces of an implant that are mechanically fixed to one another (like in Foley and Robioneck).

In light of the above, Applicants respectfully submit that independent claims 1 and 10, as amended, are allowable over the prior art cited by the Examiner. Given that claims 2-5, 7-9, and 11-18 properly depend from one of independent claim 1 or independent claim 10, such claims also necessarily overcome the prior art cited by the Examiner. A dependent claim is necessarily narrower than an independent claim from which it properly depends. Therefore, Applicants respectfully request allowance of each and every one of currently claims 1-5 and 7-18.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.


Application No.: 10/781,507

Docket No.: SPINE 3.0-455 CIP CONT VI

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: June 15, 2007

Respectfully submitted,

By 
Kevin M. Kocun
Registration No.: 54,230
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicants

LD-447\